

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

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SECRETARY OF STATE

IN THE MATTER OF:)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
HRRW PROPERTIES, LLC)	
)	
)	CASE NO. 07-095D
RESPONDENT)	DOCKET # 04.30-097945A
)	
)	

AGREED ORDER

This matter came to be heard before the Tennessee Water Quality Control Board upon the Commissioner's Order and Assessment of Civil Penalty and the Respondent's Petition for Appeal. The Board, a quorum present, hereby adopts the following Findings of Fact, Conclusions of Law, Order and Assessments to which the parties have agreed, as evidenced by their signatures below.

FINDINGS OF FACT

I.

Paul E. Davis is the duly appointed Director of the Division of Water Pollution Control (hereinafter the "division") by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "department").

II.

HRRW Properties LLC, (hereinafter the "HRRW") is an active limited liability corporation licensed to conduct business in the State of Tennessee and is the owner of HRRW Trailer Park located at 500 Steam Plant Road, Gallatin, in Sumner County Tennessee, 37066 (hereinafter the "site"). Service of process may be made on

Respondent HRRW, through Mr. Daryl Holt at 695 Nashville Pike, Suite 301, Gallatin, TN 37066.

JURISDICTION

III.

Whenever the Commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*, the *Water Quality Control Act*, (hereinafter the “Act”) has occurred, or is about to occur, the Commissioner may issue a complaint to the violator and may order that corrective action be taken, pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the Commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated, pursuant to T.C.A. § 69-3-105, and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (hereinafter the “Rules”).

IV.

The Respondent is a “person” as defined at T.C.A. § 69-3-103(20) and, as herein described, have violated the Act.

V.

T.C.A. § 69-3-108 requires that a person obtain a permit from the department to operate a sewerage system.

VI.

The unnamed tributary to the Cumberland River, referred to herein, is “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, “Use Classifications for Surface Waters”, is contained in the *Official Compilation of Rules and Regulations for the State of Tennessee*. Accordingly, these water bodies have been classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

FACTS

VII.

On October 10, 2003, division personnel were notified that a privately owned sewage pump station was overflowing at a trailer park located at 500 Steam Plant Road, in Gallatin. Division of Ground Water Protection personnel had observed the overflow while working in Sumner County and alerted division personnel.

VIII.

On October 13, 2003, division personnel discussed this matter with Mr. David Gregory, Superintendent of Gallatin Public Utilities, for the City of Gallatin. Mr. Gregory indicated that he was familiar with the problem and confirmed that HRRW pump station and its force main were not owned or maintained by the City of Gallatin.

IX.

On October 15, 2003, division personnel issued Mr. Daryl Holt with Respondent HRRW a Notice of Violation (NOV) for operating an unpermitted sewage collection system. In the NOV, division personnel requested that Respondent HRRW submit an application for a State Operation Permit (SOP) and be prepared to meet all of the applicable requirements, or to have the City of Gallatin agree to assume ownership and maintenance of the system. In the NOV, division personnel also requested Respondent HRRW to submit a corrective action plan and compliance schedule (CAP-CS) within 30 days of receipt of the NOV detailing what steps would be taken to bring the system into compliance with the Act.

X.

On November 12, 2003, Mr. Craig Hayes sent the division a response letter to the NOV on behalf of Respondent HRRW. In his letter, Mr. Hayes explained that the overflow of sewage had been caused by a break in a cleanout and was not actually a problem with the pump station as previously reported. Mr. Hayes also questioned whether a permit was needed when the collection system emptied into the City of Gallatin's collection system.

XI.

On November 19, 2003, division personnel replied back to Mr. Hayes and reiterated that a permit was required for the operation of a collection system under the

Act and included a copy of the Act as well as a copy of the Water Environmental Health Act, which also has language granting the State of Tennessee regulatory authority over collection systems.

XII.

On Tuesday, August 17, 2004, division personnel received a complaint that sewage was being discharged from a sewer line at the site. The complainant said that the sewage discharge began on August 11, 2004, and was flooding the trailer park access road. According to the complainant, efforts by local residents to get corrective action from Respondent AP, and the Gallatin City Codes Department had been unsuccessful.

XIV.

On August 18, 2004, division personnel called and left a message with Respondent HRRW. Division personnel then called Ms. Sarina Brownlee with Action Properties—the property manager—who said that she was unaware of the problem and then said that she hoped to have the problem fixed by the end of the week. Division personnel informed her that the sewage was a health hazard and must be fixed that day. Ms. Brownlee then said that she would contact Respondent HRRW and try to get the issue resolved.

XV.

On August 19, 2004, Respondent HRRW called to notify division personnel that a plumber had been hired to correct the problem. He informed division personnel that the sewage overflow was the result of a collapsed line, which would be corrected later that

day when the backhoe arrived to excavate the line. Respondent HRRW said that he would send the division a written report when the work was completed.

XVI.

On August 27, 2004, division personnel performed a follow-up inspection of the site. During that inspection, division personnel observed that a section of sewer line had been laid in front of trailer number 1 and that repairs on a sewer line cleanout were being completed in front of trailer number 28. Division personnel did not observe any discharge of sewage during the inspection.

Upon returning to the office, division personnel sent a second NOV to Respondent HRRW. In the NOV, division personnel reiterated that the system must have coverage under a permit and that the Respondents were in violation of the Act.

XVII.

On July 26, 2005, division personnel received a complaint that raw sewage was discharging from a trailer park in Sumner County. Division personnel then notified Mr. Mark Parker with Gallatin Public Utilities about the complaint. Mr. Parker responded that it was likely grease, which had been the problem last time there was a sewage overflow. Mr. Parker promised to send over a technician to investigate the complaint.

XVIII.

On July 27, 2005, division personnel inspected the site and observed small pools of sewage around the wet well and in the ditch leading from the wet well to the trailer park driveway. While at the site, division personnel spoke with a resident who stated that the problem had existed for over a year and that repeated complaints to the Respondents

had been ignored. Upon returning to the office, division personnel had a voice message from Mr. Parker saying that the discharge force main on the pump station appeared to be broken. Division personnel then contacted Ms. Sarina Brownlee with Action Properties who said she would get a plumber to fix the problem right away.

XIX.

On August 4, 2005, division personnel sent Respondent HRRW a third NOV for operating a sewage collection system without a permit. In the NOV, division personnel summarized the previous NOVs and reiterated that the Respondent could either obtain coverage under a standard operating permit or have the City of Gallatin assume ownership of the collection system and pump station. Division personnel again requested that Respondent HRRW submit a corrective action plan to the division within 30 days of receipt of the NOV. A copy of the NOV was also sent to the City of Gallatin. Division personnel did not receive the corrective action plan.

XX.

On June 8, 2006, division personnel received a complaint that sewage was flowing across the ground at the site.

XXI.

On June 15, 2006, Division personnel inspected the site and verified that sewage was pooling on the ground in front of trailer number 42. The source of the sewage appeared to be from a missing cleanout cap underneath trailer number 42. No one was available to speak with at the site.

XXII.

On June 20, 2006, division personnel discussed the sewage overflow with Mr. Holt, who said that the residents in the trailer park would often sabotage the system when they got behind in their rent but that he would get the problem corrected right away. Mr. Holt also said that the city attorneys for Gallatin were looking into what improvements would be necessary in order for the City of Gallatin to assume ownership of the system. Division personnel requested that Mr. Holt send in a letter detailing the status of the system and the items discussed during the phone conversation.

XXIII.

On December 7, 2006, division personnel received another complaint that raw sewage was discharging from the site.

XXIV.

On December 8, 2006, division personnel investigated the complaint and observed that a sewage odor permeated the area. Division personnel discovered a cleanout pipe filled with gravel and sewage in front of trailer 28. Sewage was also observed in the wet weather conveyance leading away from the cleanout. Standing pools of sewage were also observed between trailer numbers 17 and 21.

XXV.

While at the site, division personnel spoke with a septic service provider who had been called by Strong Construction Company. According to the operator of the septic

truck he had visited the site at least 3 times during the previous year to address sewage overflows.

XXVI.

On March 7, 2007, personnel from the City of Gallatin contacted division personnel via electronic mail to inform the division that there had been another complaint of raw sewage discharging from the site.

XXVII.

On April 3, 2007, division personnel received a complaint that sewage was overflowing and pooling around several of the trailers.

XXVIII.

On April 12, 2007, division personnel visited the site in response to the aforementioned complaint. Upon arriving at the site, division personnel detected the aroma of sewage in the air and observed sewage in a drainage ditch near the railroad tracks. Upon returning to the office division personnel referred the case for enforcement.

XXIX.

On April 9, 2007, The City of Gallatin sent Respondent HRRW a letter with a timeline detailing several milestones that the Respondents must meet. The timeline included the following items:

- Submit an engineering plan detailing all necessary improvements to the pump station and system no later than May 5, 2007.

- Obtain all regulatory approvals necessary to complete the improvements detailed in the engineering plan no later than June 5, 2007.
- Send in notification of bid award, confirming the selection of a contractor no later than June 20, 2007.
- Complete all construction no later than September 20, 2007.

XXX.

On May 23, 2007, division personnel received the plans and specifications for sewer line improvements for HRRW Trailer Park at 500 Steam Plant Road in Gallatin. The plans were subsequently approved on June 7, 2007.

XXXI.

On June 13, 2007, division personnel spoke with Assistant Superintendent David Kellogg of Gallatin Public Utilities and the sewer system design engineer Richard Jones. Both stated that they expected the City of Gallatin to assume ownership of HRRW sewer system provided it meets the City of Gallatin's specifications.

XXXII.

On July 10, 2007, the Division issued Director's Order 07-095 to HRRW Properties, LLC. The Order included a civil penalty of \$75,000.00, of which \$15,000.00 was due within thirty days of receipt of the Order. A timely appeal was received from the Respondent on August 9, 2007.

XXXIII.

On March 8, 2008 Division personnel inspected the site and found that work on the project had yet to begin, and the same problems persisted. The Division had yet to receive any response from the Respondent indicating when work would begin.

XXXIV.

On March 27, 2008 the Respondent accepted bids from Trammel Construction Solutions, LLC for the water and sewer infrastructure replacement project at the site. Construction will be monitored by Gallatin Public Utilities. Upon confirmation by Gallatin Public Utilities that the construction was completed according to the approved plans, the operation and maintenance of the new infrastructure will be assumed by Gallatin Public Utilities. Work began on the project on April 14, 2008, and is expected to be completed by mid-June 2008.

XXXV.

During the course of investigating this matter, the Division incurred damages in the amount of ONE THOUSAND THREE HUNDRED AND FORTY-ONE DOLLARS AND SEVENTY CENTS (\$1,341.70).

VIOLATIONS

XXXVI.

By operating a sewage collection system without authorization under a Standard Operating Permit, the Respondents have violated T.C.A. §§ 69-3-108(a)(b) and 69-3-114(b).

T.C.A. §69-3-108(a) states:

- (a) Every person who is or is planning to carry on any of the following activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic

discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

(b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes, or other wastes into water, or a location from which it is likely that the discharged substances will move into waters;

T.C.A. § 69-3-114(b) states:

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

XXXVII.

By refusing to furnish information requested by the division, the Respondent has violated T.C.A. §§ 69-3-108(b) and 69-3-114(b) as referenced above.

XXXVIII.

By allowing unpermitted discharges of sewage into waters of the state or to a location where the discharge was likely to enter waters of the state, the Respondent has violated T.C.A. §§ 69-3-108(b) and 69-3-114(b) as referenced above.

ORDER AND ASSESSMENT

XXXIX.

WHEREFORE, PREMISES CONSIDERED, the Board hereby ORDERS and AGREES that:

1. Upon completion of the project and final approval by the City of Gallatin, the Respondent shall send in documentation of completion to the manager of the Division of Water Pollution Control at the Nashville Environmental Field Office, 711 R.S. Gass Boulevard, Nashville, Tennessee 37243.
2. If for any reason whatsoever completion of the project and final approval by the City of Gallatin is or will be delayed beyond 60 (sixty) days of their receipt of this Agreed Order, the Respondent shall notify the manager of the Division of Water Pollution Control at the Nashville Environmental Field Office at the address above.
3. The Respondent is hereby assessed a reduced CIVIL PENALTY in the amount of TWELVE THOUSAND SEVEN HUNDRED AND FIFTY DOLLARS (\$12,750.00), payable to the Division within thirty (30) days of their receipt of this Agreed Order.

4. The Respondent is hereby assessed DAMAGES in the amount of ONE THOUSAND THREE HUNDRED AND FORTY-ONE DOLLARS AND SEVENTY CENTS (\$1,341.70), which shall be paid to the Department within thirty (30) days from the receipt of this Agreed Order.

5. The contingent penalties contained in Director's Order 07-095D are permanently dismissed by this Agreed Order and will not be pursued by the Division. However, the Division reserves the right to pursue further enforcement against the Respondent for failure to properly complete the project at the site within a reasonable period of time, excluding factors beyond the control of the Respondent.

6. Payment of the civil penalty and damages shall be made to "Treasurer, State of Tennessee" and shall be sent to the Division of Fiscal Services, Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L & C Annex, 401 Church Street, Nashville, TN 37243. The case number, **WPC07-095D** should be included on or with the payment.

7. The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

REASONS FOR DECISION

The above Findings of Facts and Conclusions of Law and the Orders were made in an effort to provide a coordinated system of control and management under the Tennessee Water Quality Control Act. The Board encourages settling cases in the interest of avoiding the time and expense of prolonged litigation.

Adopted and approved by a majority of the Board, a quorum being present, on this

20 day of May, 2008.

APPROVED FOR ENTRY

FOR THE TENNESSEE WATER QUALITY CONTROL BOARD:

E. W. Floyd
Chairperson

David L. Henry
David L. Henry
Assistant General Counsel
Tennessee Department of Environment & Conservation

RESERVATION OF RIGHTS

The Respondent does not admit or deny the factual allegations or the alleged violations of law contained in this Agreed Order. The Respondent reserves its rights to contest the factual allegations and alleged violations contained in this Agreed Order in any proceeding other than a proceeding brought by the Department.

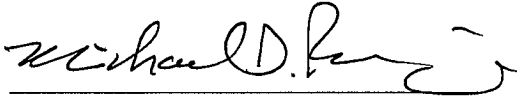
RIGHTS OF APPEAL

The Respondent is hereby notified and advised of the right to administrative and judicial review of this AGREED ORDER pursuant to the Tennessee Uniform Administrative Procedures Act, T.C.A. §§ 4-5-316, 4-5-317 and 4-5-322 and the Water Quality Control Act, T.C.A. §§ 69-3-111 and 69-3-115.

T.C.A. § 4-5-316 gives a party the right to submit to the Board a Petition for Stay of Effectiveness of a Final Order within seven (7) days after its entry. T.C.A. § 4-5-317 gives any party the right to file a Petition for Reconsideration within ten (10) days after the entry of a Final Order, stating specific grounds upon which relief is requested.

T.C.A. § 4-5-322 and 69-3-111 provide the right of judicial review by filing a Petition in the Chancery Court of Davidson County within sixty (60) days of entry of this Order.

By entering into this Agreed Order, the Respondents knowingly and voluntarily waive their rights to appeal, as described in the RIGHTS OF APPEAL section, listed above.

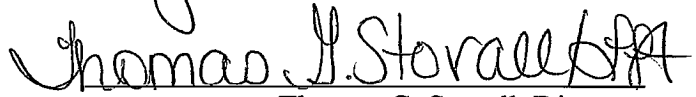


Michael D. Pearigen
Farmer & Luna, PLLC
333 Union Street, Suite 300
Nashville, Tennessee 37201
Attorney for the Respondent

May 8, 2008
Date

Entered in the Office of the Secretary of State, Administrative Procedures

Division, this 20th day of may, 2008.



Thomas G. Stovall, Director
Administrative Procedures Division

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